



U.S. Citizenship  
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Services

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Executive Order 13526

Administrative

D2



FILE: WAC 04 064 52835 Office: CALIFORNIA SERVICE CENTER Date: JUN 21 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a dental office and seeks to employ the beneficiary as a dental specialist/researcher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a dental specialist/researcher. Evidence of the beneficiary's duties includes the I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would:

- Plan, organize, and maintain miscellaneous dental programs of the dental office;
- Confer with dentists and staff to formulate new policies and improve existing policies and recommend procedural changes;
- Develop and implement systems to be used by the dental office, clinic, and laboratory to assure a smooth flow of work and improve efficiency;
- Formulate personnel hiring, promotion, and termination procedures and coordinate staff assigned tasks and work schedules;
- Evaluate staff members' work performances and ensure all safety procedures are followed;
- Solve workers' procedural problems and demonstrate proper dental techniques;
- Coordinate with various dental laboratories that the clinic utilizes to assure that all work orders are submitted and received correctly and timely;
- Review major professional dental journals for dental health issues and development particularly relevant to the dentists' practice, and provide dentists with the latest information;
- Research literature to find research suggestions of modes of treatment for possible diagnosis, eliciting detailed patients' histories, and discuss patient charts and records with dentists; and
- Supervise billing of patients and insurance companies financially accountable for services rendered.

The petitioner requires a minimum of a doctor of dental surgery degree (DDS) for entry into the proffered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though varied, are essentially those noted for medical and health services managers in a small dental practice. The *Handbook* notes that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices (as in this instance) and some other facilities may substitute on-the-job experience for formal education, and do not require a baccalaureate level education at all. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submitted statements from three dental clinics indicating they employed, or had employed, a dental specialist and required a minimum of a DDS degree for the position. Those statements do not, however, specifically detail the duties of the positions so that an actual comparison of the positions can be made with the duties of the proffered position. Further, statements from three dental offices are insufficient in scope to establish an industry educational standard for the offered position.

The petitioner also submitted copies of two job advertisements to establish that a degree requirement is common to the industry in parallel positions among similar organizations, and additional documentation to establish that some organizations do employ dentists as dental service managers. One of the job advertisements submitted indicates that a dental director for a public health department required its director, who would direct a Tribal Dental Program in Tucson, AZ, Guadalupe and at a dental clinic, to have a DDS degree. The duties of that position are clearly not similar to the duties of the proffered position where the petitioner would perform his duties in a dentist office with 10 employees. The second advertisement is for a dental assistant and requires a bachelor's degree in any dental related field or two years of experience. Two years of experience is not equivalent to a bachelor's degree under applicable regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The remaining documentation submitted indicates that some health centers and public health departments have on staff dental service managers possessing DDS degrees. Those organizations are not similar to that of the petitioner, and as such, the duties associated with the directors of those facilities would not be similar to the duties of the proffered position. For example, the dental services director of Salud Family Health Centers exercises direct supervision over all dental personnel, including other dentists, hygienists, students, and auxiliary staff, and oversees all dental services offered at all sites in the Salud network. The beneficiary in this instance would have no supervisory responsibilities. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routinely performed by health service managers without a baccalaureate level education in a specific specialty at similar organizations in the industry. The position also contains some research responsibilities which would require the beneficiary to review dental journals and literature and provide dentists with information concerning new treatments, procedures, etc. The nature and purpose of the research to be performed, however, is not particularly complex and is regularly performed in the industry by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.